



Attorney Docket No.: 4031-001

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : DONOVAN, Kevin
Serial No. : 09/385,802
Filing Date : August 30, 1999
Title : UNIVERSAL INSTANT MESSAGING SYSTEM
INTERNET
Examiner : JOHNSON, Marlon B.
Group Art Unit : 2153

APR 09 2003

Technology Center 2100

Assistant Commissioner for Patents
Washington, D.C. 20231

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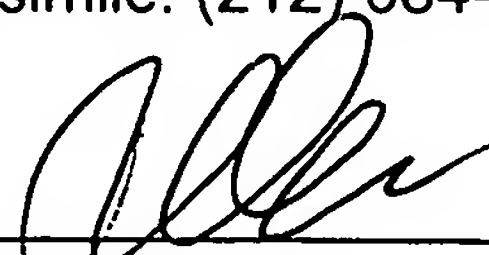

Gisele Richardson

TRANSMITTAL OF APPEAL BRIEF

S I R :

Enclosed are three copies of the Appeal Brief in accordance with 37 CFR 1.192 and a check for \$160.00. The Commissioner is hereby authorized to charge any additional fees to Account No. 07-1730.

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APR 02 2003

PTO/SB/17 (01-03)

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FEE TRANSMITTAL

for FY 2003

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☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 160.00)

Complete if Known

Application Number	09/385,802
Filing Date	August 30, 1999
First Named Inventor	DONOVAN, Kevin Remington Joseph Bartholomew
Examiner Name	JOHNSON, Marlon B.
Art Unit	2153
Attorney Docket No.	4031-001

METHOD OF PAYMENT (check all that apply)

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Gottlieb, Rackman & Reisman, P.C.

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FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 750	2001 375	Utility filing fee	
1002 330	2002 165	Design filing fee	
1003 520	2003 260	Plant filing fee	
1004 750	2004 375	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	
SUBTOTAL (1)			(\$ 0)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1202 18	2202 9	Claims in excess of 20	
1201 84	2201 42	Independent claims in excess of 3	
1203 280	2203 140	Multiple dependent claim, if not paid	
1204 84	2204 42	** Reissue independent claims over original patent	
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent	
SUBTOTAL (2)			(\$ 0)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 410	2252 205	Extension for reply within second month	
1253 930	2253 465	Extension for reply within third month	
1254 1,450	2254 725	Extension for reply within fourth month	
1255 1,970	2255 985	Extension for reply within fifth month	
1401 320	2401 160	Notice of Appeal	
1402 320	2402 160	Filing a brief in support of an appeal	160.00
1403 280	2403 140	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,300	2453 650	Petition to revive - unintentional	
1501 1,300	2501 650	Utility issue fee (or reissue)	
1502 470	2502 235	Design issue fee	
1503 630	2503 315	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 750	2809 375	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 750	2810 375	For each additional invention to be examined (37 CFR 1.129(b))	
1801 750	2801 375	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 160.00)

SUBMITTED BY

(Complete if applicable)

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Signature		Date	March 28, 2003		

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APPEAL BRIEF

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A. REAL PARTY IN INTEREST

The subject application is assigned to Prodigy Communications Corporation, a Delaware corporation.

B. RELATED APPEALS AND INTERFERENCES

None

C. STATUS OF CLAIMS

Originally the application was filed with claims 1-23. Claim 9 has been cancelled; all other claims stand rejected.

D. STATUS OF AMENDMENTS

No amendments to the application have been filed after Final Rejection.

E. SUMMARY OF THE INVENTION

Briefly, the term 'instant messaging system' refers to a system which allows two parties to exchange Instant Messages or IMs on devices connected at the same time to the Internet. In recent years, with the advent of wireless communications, IMs are exchanged not only between desktop and laptop devices but also portable devices, such as PDAs and cell phones.

There are several IM systems presently available, each being based on a different platform. The problem with these existing is that they do not allow exchanging IMs to be exchanged between subscribers on different platforms.

The system claimed herein overcomes this problem. In the subject system, two users who are using different IM platforms (a user of an IM platform is said to be in that IM platform's realm) can participate in a common instant messaging session by exchanging IM messages.

Each user accesses the Internet via a PC. (The term PC is used generically to refer to any device capable of accessing the Internet and exchange IMs). The PC is provided with IM session manager software (an IM manager 34) which is used to establish and monitor each IM session including receiving and responding to commands from the user related to the instant messaging function and displaying information related to the IM function. The IM session manager includes an internal database 36 used to store the protocols for the different realms on which other users reside.

In addition, an IM server 30 is also provided which is used to handle the IM messages between various users. Each IM server is associated with a respective IM database 31. This database is used to register all the users of the IM service, and to store information for each user, such as his name, his Internet address, his realm, and so on. Importantly this IM database is also used to generate and maintain a list of all the current users, i.e., the users who are currently online and can therefore participate in an IM session, together with each such user's current IP address. Each time a registered user signs onto the Internet, his IM manager automatically sends its current IP address. The IM database receives this information and edits its list of current users. When a user signs off the Internet, the list is again edited to show this change.

The IM server 30 and database 31 can be incorporated into the server of an SP 14 or can be incorporated into an independent server 23 that services IM sessions on the Internet. In the first implementation, the SP can control access to the IM sessions while in the second implementation, the IM function is open to all users.

Preferably, when a user accesses the Internet, a window (Fig. 5) is displayed on his PC screen showing an active (or current) friends list (i.e., the friends from his list who are presently online) which is a subset of the active users in the IM database. The user can then initiate an instant messaging session with one or more friends on this list and exchange messages or other data. As shown in Fig. 5, other information may also be provided for each current user, such as his realm, whether or not he has access to certain Internet functions, such as Internet phone, etc.

F. ISSUES

1. Whether the Examiner made out a prima facie case of obviousness with regard to all the claims of the groups listed below.

2. Whether the two references obviate the claimed invention

G. GROUPING OF CLAIMS

In the opinion of the Appellant, the claims can be grouped as follows:

Group 1: Claims 1-6, 9-14 - system providing universal IM.

Group 2: Claim 7 IM - database incorporated in the SP.

Group 3: Claim 8 - IM database incorporated in a separate server.

Group 4: Claim 15 - display shows characteristics of users.

Group 5: Claims 16-23 - method of exchanging IM.

H. ARGUMENT

1. The Prior Art Cited by the Examiner

a. Mozilla

This reference is a news item from the Internet allegedly appearing in April 20, 1999. The Mozilla article discusses a prospective Instant Messaging (IM) and chat project “with the stated goal of supporting a wide variety of chat protocols” (lines 1-2). Note in particular the statements (with the underlines added) that “ Mozilla ... is charged to develop the Communicator browser code’ (lines 7-10); “ ...why the company would risk undermining such a valuable franchise” (lines 20-23); “Mozilla will base its support on its Instant Messaging application programming interface (API)” (lines 25-27); “We would like to make Mozilla be able to do chatting and ‘instant messaging’ “ (lines 29-30); “We would like Mozilla to be able to usefully talk to all of these protocols, and hide most of the differences from the user” (lines 33-35).

When taken together, these statements all indicate nothing more than the launching of a project. There is nothing to indicate whether the project was ever finished or whether it was ever able to perform the desired functions.

b. Vaudreuil (U.S. Patent No. 5,940,478)

The Vaudreuil reference discloses a system in which a communication system is capable of communicating with other systems using different protocols, the described system including a media translator. There is nothing in this reference that pertains to instant messaging (IM). Instead, this reference discloses a system adapted to transmit different type of messages between users. The three types of messages discussed in

the reference are faxes, voice messages and e-mail. According to this reference, previously, each type of these messages was handled by different system, and in fact some of the same type of messages (for example cc. Mail and MCI Mail) are incompatible with other and hence messages from one system cannot be readily exchanged. The reference discloses a system adapted to reformat the address of each message and to store the messages with reformatted addresses.

Four important points that must be noted related to the nature of the messages and the manner or conditions under which these messages are delivered. First, the messages themselves are not exchanged in real time. Second, the messages are stored by the system and then are retrieved by the user at the user's discretion. Third, since the user retrieves the message at a later time, it does not matter whether the user is connected to the system or not at the time the message is received. Four, in the system described by the reference there is no database available of the users on the Internet at any given moment.

2. The Legal Standard for Obviousness

An obviousness determination is based on three factual inquiries: the content of the prior art, the level of ordinary skill in the art and the differences between the prior art and the claims at issue. Once these factual determinations are made a determination of obviousness is reached based on whether the claimed subject matter would be obvious to a person skilled in the art in light of the prior art. Graham v. Deere 383 U.S. 1, 148 USPQ 459 (1966).

A conclusion of obviousness must be predicated on a combination of two or more references. However, in reaching this conclusion, the Examiner cannot just pick and chose only as much as will support a given position, because that would constitute impermissible hindsight. In re Clayton 205 USPQ 269 (PTO Bd App. 1979). Instead, the reference must be considered for all its teachings.

Moreover, a combination of references to obviate a claim is improper unless the prior art suggests the combination. More specifically, before the PTO can combine the disclosure of two or more references in order to establish *prima facie* obviousness, there must be some suggestion for doing so, found in the references themselves or in the knowledge generally available to the person skilled in the art. In re Jones, 21 USPQ2d 1941 (Fed Cir. 1992).

3. The Content of the Prior art

As discussed above, the two references cited by the examiner are the Mozilla and Vaudreuil references. When taken as a whole, Mozilla discusses a prospective project for developing a universal IM system. However, Mozilla fails to disclose any elements for making such a system.

Vaudreuil discloses a system in which different kind of messages, such as faxes, voice mail or e-mail are sent from one user to another. The system does not mention IM and does not disclose any elements that can be used to provide IM sessions.

4. Differences between the Prior Art and the Claims at Issue

Claim 1 lists the following elements:

an IM manager;

an IM server;

an IM database with a listing of users currently connected to the Internet.

The Examiner admits that none of these elements are found in Mozilla
(see last full paragraph on page 1 ¹).

Claim 6 lists the following elements:

an IM component for each device providing IM service; and

an IM database storing a list of users registered to access instant messaging and currently active.

The Examiner admits that none of these elements are found in Mozilla
(supra).

Claim 7 recites the IM database is incorporated in an SP serving users.

Mozilla does not mention the IM database or where is it located.

Claim 8 recites that the IM data base is incorporated into a separate IM server.

There is nothing in Mozilla disclosing these features.

Claim 15 recites a display for indicating characteristics of the users.

There is nothing in Mozilla disclosing these features.

Claim 16 recites a method for establishing an instant messaging session between a first and a second user including the step of “determining a current IP address of the second user.” There is nothing in Mozilla describing how IM is to be implemented.

¹ All Office Action references pertain to the Final Office Action, dated September 20, 2002.

Claim 17 recites that “each time one of said first and second users accesses the Internet, the corresponding device sends a message to an IM database indicating that the corresponding user is on line and said current IP address.”

The Examiner admits that Mozilla does not disclose these features.

As discussed above, Vaudreuil pertains to a system voice communication system that has nothing to do IM. It does not disclose any devices that are capable of performing any IM functions. Thus, this reference fails to disclose any of the claim elements listed above.

5. When Viewed as a Whole, the References Fail to Disclose the Claimed Subject Matter

Two or more references can be said to obviate a claim, only if they can be combined to teach all the claimed elements. As discussed above, each of the pending claims recites one or more elements which are not found in the two references cited by the Examiner. In fact the Examiner admitted that Mozilla does not disclose any of the claimed elements. His reliance on Vaudreuil is ineffective, since Vaudreuil teaches nothing about IM systems or its elements. Therefore it is submitted that, as a matter of law, the Examiner failed to make out a prima facie case of obviousness.

6. There Is No Suggestion for Modifying the Vaudreuil Reference

Taken as a whole, the Mozilla reference at most teaches to a person skilled in the art about the problems associated with exchanging IM messages across realms. There is nothing in the reference that suggests how this may be accomplished. There

is nothing in this reference which points a person skilled in the art to Vandreuil or any other reference which may be used to solve this problem. The fact that a special project was required to solve this problem indicates that the solution is not trivial. That is, clearly, the solution was not merely to take some off the shelf items and perform slight modifications thereon. Because the solution is not trivial, it may be implemented in many different ways. The subject application provides two ways of implementing universal IM. There may be other solutions as well.

When taken as a whole, Vandreuil discloses a system for exchanging voice messages, faxes and e-mail between users of different protocols. As discussed above, while IM takes place real time on line the messages exchanged in the Vandreuil system take place in a time-independent manner. Therefore the very mode of operation of the Vandreuil system is different than an IM system. Hence, a person skilled in the art would not combine the two references in the manner suggested by the Examiner since they operate in a different manner and there is nothing in either reference that would suggest the combination, as opposed to many other combinations. In other words, since the two systems operate in different manner, the Examiner must be able to show why a person skilled in the art faced with the need for universal IM would rely on Vandreuil. This last point is especially important in view of the fact that the Vandreuil system is not capable of providing universal IM without major reconstruction.

The issue here is whether a skilled person familiar with the problem of exchanging IMs across different realms (a problem admittedly recognized by Mozilla) would consider Vandreuil in arriving at a solution. It is submitted that a person skilled in the art would recognize that the Vandreuil system is not time-sensitive while IM systems

are real time and therefore it could not be used for performing IM messaging without some major modifications and experimentation. There is no reason to modify Vaudreuil to exchange of real time message. Therefore, without something more specific, there is nothing in the Vaudreuil or anywhere else that would suggest that it would be desirable to modify the Vaudreuil system.

7. Critique of the Examiner's Position

The Examiner argues that Vaudreuil discloses “means for obtaining a foreign protocol for communication with another realm (protocol) [sic]; and a server including a database with a listing of users currently connected to the Internet, each having a unique identifier, wherein means are arranged to receive the unique identifier of a particular user associated with the another realm (protocol) from the server and to establish connection to the other user using the foreign protocol (see col. 6, line 18 to col. 7, line 41).” (Top of page 2 of the Office Action).

The Applicant has reviewed the referenced passage, as well as the rest of the reference, and cannot find any support for this assertion. The referenced passage describes how voice communication devices using public domain protocols such as X.400, SS7, AMIS etc., or private domain protocols, all having to do with standard voice communications. It has nothing to do with IM systems. Moreover, the referenced passage describes how a voice communication system establishes a connection with a messaging system so that a user can leave a message to another. At no time does one user establish a connection with another user, as alleged by the Examiner.

Importantly, in an IM system, an exchange of IM messages can occur only if both participants are on line at the same time. One user cannot send an e-mail message to another user who is not on line. Therefore, as recited by the claims, in the present invention, a database is provided to list all the current users. This database can be stored in various locations, such as the local SP or a special IM server. Before IM messaging is allowed, this listing is checked to insure that the respective user(s) are capable of receiving and transmitting messages. This aspect of the invention is completely absent in the Vaudreuil. First, the referenced passage only discusses voice communications. The reference also discusses the exchange of e-mail or faxes in addition to voice messages. However, a key characteristic of all these types of message exchanges is that they are time independent in the sense that a first user can send a message in any desired media to the second user. The message is stored and made available to the second user as desired by the second user. Therefore, at the time the message is sent out by the first user, it does not matter whether the second user is on line or not. Hence, contrary to the Examiner's assertions, the Vaudreuil reference does not need and does not disclose a database of current users.

G. CONCLUSION

The Examiner has rejected the claims as being obvious over two references. The Mozilla reference is nothing more than a press announcement of a proposed design project for universal IM. As the Examiner admitted, there are no details of any kind of implementation. The only thing disclosed by this reference is that there may be a need for universal IM but not how to do it.

The Vaudreuil reference discloses a system in which a communication system is capable of communicating with other systems using different protocols, the described system including a media translator. The Applicants note for the record that there is nothing in this reference that pertains to instant messaging (IM). Instead, this reference discloses a system adapted to transmit different type of messages between users, all messages which are not exchanged in real time.

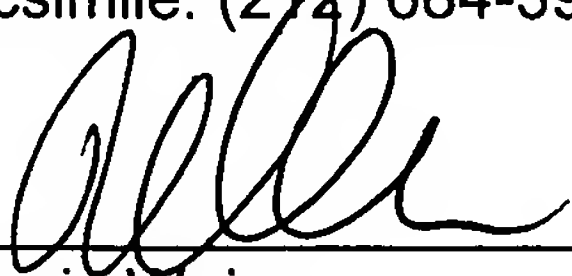
Mozilla fails to provide any details of how to implement a universal IM system. Vaudreuil fails to disclose an IM system and fails to disclose the claimed elements that make up such a system. For example, Vaudreuil fails to provide a data base of current users— an element that is required by all the pending claims.

It is respectfully submitted that the Examiner has failed to show that (1) specific claimed elements are found in the prior art; (2) the prior art could be modified to obtain the claimed elements; and (3) there is a suggestion for the combination of references to a person skilled in the art. Hence, has failed to make out a prima facie case of obviousness.

Dated: March 28, 2003
New York, New York

Respectfully submitted,

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APPENDIX

CLAIMS

1. In a distributed communication system in which a plurality of users associated with different realms access the Internet via a corresponding PC through a service provider, a device for providing instant messaging between the users, said device comprising:

an IM manager associated with the PC of a first user and arranged to obtain a foreign protocol for communicating with another realm; and

an IM server including an IM database with a listing of users currently connected to the Internet, each having a unique identifier;

said IM manager being further arranged to receive the unique identifier of a particular user associated with said another realm from said IM server and to establish connection to said other user using said foreign protocol.

2. The device of claim 1 further comprising a local database arranged to store a plurality of foreign protocols, each protocol being associated with a corresponding different realm.

3. The device of claim 1 wherein said IM server is arranged and constructed to connect to the Internet and to receive and transmit information to and from said IM manager via the Internet.

4. The device of claim 1 wherein said IM database is arranged to store information related to all said users.

5. The device of claim 1 further comprising a display arranged to show a list of current friends of a user and a selector operated by said user to select a friend from said list to establish communication.

6. A system for establishing instant messaging between a first user associated with a first realm and a second user associated with a second realm over the Internet, said system comprising:

a first and a second device for operation by said first and second users respectively, each device including a screen to display information, a selector or other input device for giving and receiving commands and selections, a communication port arranged to communicate with other users over the Internet, and an IM component arranged to establish IM sessions during which said first and second users can exchange one of instant messages and other information over the Internet, said IM component including means for receiving a request for an IM session and means for generating a request for said IM session; said IM component including an IM database storing a protocol for the other realm; and

an IM database arranged to store a list of users registered to access instant messaging and being currently active together with their current IP address;

wherein said IM component is arranged to receive a command from said first user to establish said IM session with said second user and in response to said request said IM component is arranged to obtain the current IP address of said second user and to send an access request to said second user based on said IP address and said protocol and to establish said IM session if said access request is accepted.

7. The system of claim 6 wherein said users are arranged to communicate over the Internet by different SPs wherein said IM database is incorporated into one of said SPs.

8. The system of claim 6 further comprising an IM service provider wherein said IM database is incorporated into said IM service provider.

10. The system of claim 6 wherein each said first and second device is arranged to display a window on said screen, said window identifying a list of friends of the corresponding user, said friends being currently on line.

11. The system of claim 10 wherein said first device is adapted to display a message area in one of said window and a separate window.

12. The system of claim 11 wherein each said device is adapted to receive commands from the respective user to establish a first IM session between said first user and said second user and a second IM session between said first user and a third user, said third user being identified in said window.

13. The system of claim 12 wherein said first device is adapted to allow said first user to switch between said first IM session and said second IM session, said first and second IM sessions being active simultaneously.

14. The system of claim 13 wherein said first device is adapted to display in said message area messages with said second user during said first IM session and messages with said third user during said second IM session.

15. The system of claim 10 wherein said first device is adapted to show characteristics of said friends.

16. A method of conducting an instant messaging session between a first user and a second user over the Internet, the users being associated with two different realms, each realm being accessible via the Internet using a protocol characteristic to the realm, each user getting access to the Internet via a respective first and second device, at least one device having a storage media for storing the characteristic protocol of the other realm, the method comprising the steps of:

determining a current IP address of the second user; and

establishing a connection from said first and second users using said current IP address and said characteristic protocol.

17. The method of claim 16 wherein each time one of said first and second users access the Internet, the corresponding device sends a message to an IM database indicating that the corresponding user is on line and said current IP address.

18. The method of claim 17 wherein said step of determining said current IP address comprises retrieving said address from said IM database.

19. The method of claim 17 further comprising sending a connection request from the first to the second device for establishing said instant message session.

20 . The method of claim 19 further comprising generating a response to said connection request by said second device accepting said connection request.

22 . The method of claim 16 further comprising displaying a window on the screen of said first and second devices, said window indicating a list of active users.

23. The method of claim 22 further comprising displaying said window with a message area, said message area being used to indicate messages between said users.